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Santa Fe Natural Tobacco Company
and Reynolds American Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RUSSELL BRATTAIN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SANTA FE NATURAL TOBACCO
COMPANY, INC., REYNOLDS
AMERICAN, INC., and DOES 1 through 59,

Defendants.

Case No. 4:15-cv-04705-JSW

**STIPULATION AND ~~PROPOSED~~
ORDER TO STAY ALL CASE
PROCEEDINGS PENDING MDL
DETERMINATION**

CLASS ACTION

Jury Trial Requested by Plaintiff

Complaint Filed October 9, 2015

No Trial Date Assigned Presently

1 **WHEREAS**, on October 9, 2015, Plaintiff filed a complaint on behalf of himself and a
 2 proposed class alleging violations of law by Defendants regarding the advertising, marketing and
 3 sale of Natural American Spirit cigarettes;

4 **WHEREAS**, Defendants have filed a Motion to Dismiss [Dkt. No. 22], Request for
 5 Judicial Notice [Dkt. No. 23], Amended Request for Judicial Notice [Dkt. No. 26], and Motion
 6 for Leave to File Amended Motion to Dismiss [Dkt. No. 36], each of which remain pending and
 7 for which the time for Plaintiff to respond has not yet passed;

8 **WHEREAS**, on January 6, 2016, Plaintiffs in the case *Ceyhan Haksal et al. v. Santa Fe*
 9 *Natural Tobacco Company, Inc., et al.* 1:15-cv-001163 (D.N.M.) (collectively the “*Haksal*
 10 *Plaintiffs*”), brought by Plaintiffs on behalf of themselves and a proposed class alleging violations
 11 of law by Defendants regarding the advertising, marketing and sale of Natural American Spirit
 12 cigarettes, filed a Motion for Transfer of Actions to the District of New Mexico for Consolidation
 13 of All Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 [MDL No. 2695] (the “MDL Motion”);

14 **WHEREAS**, the following five actions, including this one, are pending in district courts
 15 in California, New Mexico, New York, and Florida, are listed as Scheduled Actions in the MDL
 16 Motion and are subject to the *Haksal* Plaintiffs’ MDL Motion: (1) *Haksal v. Santa Fe Natural*
 17 *Tobacco Co., Inc.*, No. 1:15-cv-001163 (D.N.M.); (2) *Dunn v. Santa Fe Natural Tobacco Co.,*
 18 *Inc.*, No. 1:15-cv-01142 (D.N.M.); (3) *Rothman v. Santa Fe Natural Tobacco Co.*, No. 7:15-cv-
 19 08622 (S.D.N.Y.); (4) *Brattain v. Santa Fe Natural Tobacco Co.*, No. 4:15-cv-04705 (N.D. Cal.);
 20 and (5) *Sproule v. Santa Fe Natural Tobacco Co.*, No. 0:15-cv-6204 (S.D. Fla.); and a sixth
 21 action, filed after the MDL Motion, (6) *Cuebas v. Santa Fe Natural Tobacco Co.*, No. 7:16-cv-
 22 00270 (S.D.N.Y.), has been identified to the MDL Panel as a possible tag-along action;

23 **WHEREAS**, subject to Defendants’ right to oppose the MDL Motion, the parties here
 24 have met and conferred and agree that a stay in this matter pending resolution of the MDL Motion
 25 will not prejudice any of the parties, is made in good faith and in the interests of justice, is not for
 26 the purposes of delay and will conserve judicial resources, especially because the court has not
 27 yet had to consider the pending motion to dismiss or expend resources establishing a pretrial
 28

1 scheduling order, and;

2 **WHEREAS**, “it is well-settled that district courts have the inherent power to stay
3 proceedings” where a motion before the MDL panel is pending. *Silverthorn v. Lumber*
4 *Liquidators, Inc.*, 2015 WL 2356485, 2015 U.S. Dist. LEXIS 64807, No. 15-cv-01428-JST (May
5 15, 2015 N.D. Cal.) (granting motion to stay over plaintiff’s opposition, including stay of pending
6 motions, until MDL panel resolved issue of whether to centralize cases). And it is equally settled
7 that “the power to stay proceedings is incidental to the power inherent in every court to control
8 disposition of the cases on its docket with economy of time and effort for itself, for counsel, and
9 for litigants.” *Butler v. McKesson Corp.*, 2013 WL 4104093, 2013 U.S. Dist. LEXIS 113524,
10 No. C13-03154-JSW (Aug. 12, 2013 N.D. Cal.) (White, J.) (granting motion to stay in potential
11 tag-along case pending contested motion to transfer to MDL) (quoting *Landis v. North America*
12 *Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936)). *See also Rivers v. Walt Disney*
13 *Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997) (granting motion to stay pending resolution of
14 MDL motion)

15 **WHEREAS**, “[w]hen evaluating a motion to stay proceedings pending a transfer to a
16 MDL court, a primary factor to consider is the preservation of judicial resources. Staying an
17 action pending transfer can help prevent duplicative litigation and inconsistent rulings.” *Couture*
18 *v. Hoffman-La Roche, Inc.*, 2012 WL 3042994, at *2, 2012 U.S. Dist. LEXIS 104023 (N.D. Cal.)
19 (citing *Rivers*, 980 F. Supp. 1360-61) (granting motion to stay in potential tag-along action
20 pending motion to transfer to MDL);

21 **WHEREAS**, by staying this action judicial resources could be conserved in at least two
22 ways, first, “if MDL centralization is ordered and transfer is made to a court other than this one,
23 this Court will have needlessly expended its energies familiarizing itself with the intricacies of a
24 case that would be heard by another judge. And second, any efforts by this Court concerning
25 case management will most likely have to be replicated by the judge that is assigned to handle the
26 consolidated litigation Therefore, there is a great deal of this Court’s time and energy that
27 could be saved by staying the instant case pending the MDL Panel decision.” *Id.*;

1 **WHEREAS**, while a stay pending resolution of an MDL motion is not automatic and
 2 calls for the exercise of sound discretion, “it appears that a majority of courts have concluded that
 3 it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and
 4 consolidate is pending with the MDL Panel because of the judicial resources that are conserved.”
 5 *Rivers*, 980 F. Supp. at 1362 (citations omitted). *See also Good v. Prudential Ins. Co.*, 5 F.
 6 Supp.2d 804, 809 (N.D. Cal. 1998) (“courts frequently grant stays pending a decision by the
 7 MDL panel regarding whether to transfer a case”) (granting stay pending decision on MDL
 8 decision on potential tag-along case); *Coture*, 2012 WL 3042994, at *2, 2012 U.S. Dist. LEXIS
 9 104023 (“other courts, including courts within the Northern District, have granted motions to stay
 10 to preserve judicial resources [even where potentially dispositive motions or motions regarding
 11 the court’s jurisdiction are pending]) (citing *Freitas v. McKesson Corp.*, 2012 U.S. Dist. LEXIS
 12 6992, 2012 WL 161211, 2012 U.S. Dist. LEXIS 6992 (N.D. Cal. Jan. 10, 2012) (a potential “tag
 13 along” case was stayed pending the decision of the MDL Panel because interests of judicial
 14 economy favored a stay, plaintiffs would not have suffered undue hardship or prejudice if the
 15 case was stayed, a stay prevented the court from needlessly duplicating work or creating
 16 inconsistent rulings); *McCreary v. Merck & Co.*, 2005 WL 6124182, 2005 U.S. Dist. LEXIS
 17 36803 (S.D. Cal. Mar. 3, 2005) (court granted stay pending decision by MDL panel because
 18 judicial economy and consistency would be best served, and also neither party would be
 19 prejudiced).

20 **WHEREAS**, the court in one of the actions subject to the pending MDL Motion has *sua*
 21 *sponte* issued an order to show cause why that case should not be stayed pending resolution of the
 22 MDL Motion. *Sproule v. Santa Fe Natural Tobacco Co.*, No. 0:15-cv-6204 (S.D. Fla.) [Dkt. No.
 23 28, Jan. 15, 2016];

24 **WHEREAS**, the Parties expect the MDL Motion to be resolved promptly (responses to
 25 the MDL Motion are due in less than one week, on January 27, 2016 and though oral argument is
 26 not yet assigned the next MDL Panel hearing after January is March 31, 2016);

27 **WHEREAS**, judicial economy favors a stay pending transfer to MDL court, to avoid
 28

1 duplicative litigation and prevent inconsistent rulings, the Parties agree that the current case
2 should be stayed pending the outcome of the MDL Motion:

3 **NOW, THEREFORE** the Parties hereby agree, stipulate, and respectfully request that:

4 1. The Court stay all proceedings in this action pending resolution of the MDL
5 Motion, and the Hearing on Defendants' Motion to Dismiss and Amended Request for Judicial
6 Notice currently set for February 26, 2016 be ~~continued~~ vacated and reset, if necessary by further order.

7 2. The Parties be directed to notify the Court within five (5) business days after the
8 panel rules on the pending MDL Motion.

9 3. If the MDL Motion is denied or this action is otherwise not made a part of any
10 MDL ordered as a result of the MDL Motion, the Parties be directed to propose a scheduling
11 order regarding the conclusion of briefing on pending motions to ensure further that no party is
12 prejudiced by the requested stay.

13 **IT IS SO STIPULATED.**

14 Dated: January 21, 2016

15 **Respectfully Submitted,**

16 EGGNATZ, LOPATIN & PASCUCCHI, LLP

17 By: /s/ Benjamin M. Lopatin

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23 Attorneys for Plaintiff Russell Brattain and
24 the Proposed Class

25 -and-

JONES DAY

By: /s/ David C. Kiernan
David C. Kiernan

Attorneys for Defendants
Santa Fe Natural Tobacco Company and
Reynolds American Inc.

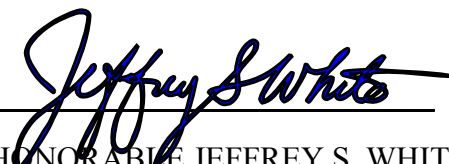
CERTIFICATION OF COUNSEL

Pursuant to L.R. 5-1(i), I, David C. Kiernan, attest that the concurrence in the filing of this document has been obtained from Benjamin M. Lopatin, and as a result, Mr. Lopatin's electronic signature shall serve in lieu of a hand signature.

By: /s/ David C. Kiernan
David C. Kiernan

IT IS SO ORDERED.

DATED: January 22, 2016



THE HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE